

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PULLEN SEEDS AND SOIL, on behalf of itself and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-599-SLR
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
<hr style="width: 45%; margin-left: 0;"/>		
WADE FARMS, WHITTINGTON & SUMNER FARMS, CLIFFORD F. DANCE, D/B/A CLIFFORD DANCE FARMS, and all others similarly situated,	)	
	)	
Plaintiffs,	)	C.A. No. 06-600-SLR
	)	
v.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

**MONSANTO'S RESPONSE TO PLAINTIFFS' MOTION FOR ORDER  
SETTING SCHEDULING CONFERENCE**

Monsanto Company hereby responds to plaintiffs' motion for an order setting a scheduling conference in these matters, and in support thereof, states as follows:

1. Monsanto has repeatedly advised plaintiffs' counsel that the practice before the assigned Judge in this case, as well as other Judges in this District (who might use a different form) is to address scheduling issues after the Court has issued an order setting the scheduling conference. The Court has not issued such an order.
2. The setting of a scheduling order is premature in light of the pending Motion to Dismiss the Complaint, which seeks dismissal of this action on the grounds that it was improperly filed in this Court in violation of a forum selection clause executed by plaintiffs. (*See Pullen*, D.I. 7; *Wade*, D.I. 5). At this time, it remains unclear whether

this action will remain before this Court or be dismissed, whereupon the plaintiffs can seek to re-file before the District Court for the Eastern District of Missouri or the Circuit Court for St. Louis County. Once this Court decides the appropriate forum for this action, the court handling the matter can issue a scheduling order reflecting that court's local rules.

3. As Plaintiff's counsel notes, it recently filed a virtually identical lawsuit by an association of farmers – *American Corn Growers Association v. Monsanto Company*, D. Del., C.A. No. 07-100-SLR. Representing many of the same farmers that are members of the putative class, the Association's standing to bring this new action is in question. Even if it has standing to proceed, many of members are subject to the forum selection clause of Monsanto's Technology Agreement, which is the subject of the pending Motion to Dismiss. In short, this new action does not militate towards the setting of a discovery conference in the *Pullen* and *Wade* cases before the resolution of the Motion to Dismiss.

4. Plaintiffs inappropriately suggest that Monsanto is somehow not cooperating or meeting its obligations to meet and confer under the Federal Rules. Monsanto has repeatedly advised plaintiffs' counsel that it is willing to meet and confer over a discovery plan and scheduling order as soon as the Court issues an order setting a scheduling conference.

5. To the extent that the Court wishes the parties to meet and confer in advance of the anticipated ruling on the motion to dismiss, Monsanto will do so. However, Monsanto suggests that the best use of the Court's, as well as the parties', time and resources would be to refrain from having a scheduling conference until the Court rules on the pending motion to dismiss.

### CONCLUSION

WHEREFORE, Monsanto respectfully requests that the Court refrain from ordering a scheduling conference until it rules on the pending motion to dismiss.

Respectfully Submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Peter E. Moll  
Scott Flick  
John J. Rosenthal  
Timothy T. Finley  
HOWREY LLP  
1299 Pennsylvania Ave., N.W.  
Washington, DC 20004  
(202) 783-0800

Kenneth A. Letzler  
Robert N. Weiner  
Jonathan I. Gleklen  
Anthony J. Franze  
ARNOLD & PORTER LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206  
(202) 942-5000

Dated: March 1, 2007  
780577 / 30803

By: /s/ David E. Moore  
Richard Horwitz (#2246)  
David E. Moore (#3938)  
Hercules Plaza, 6th Floor  
P.O. Box 951  
Wilmington, DE 19801  
(302) 984-6000  
[rhhorwitz@potteranderson.com](mailto:rhhorwitz@potteranderson.com)  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)

*Attorneys for Defendant  
Monsanto Company*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on March 1, 2007, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

Jeffrey S. Goddess  
Rosenthal, Monhait & Goddess, P.A.  
919 Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899

I hereby certify that on March 1, 2007, I have sent by Electronically Mailed the foregoing document to the following:

Noah H. Silverman  
Bruce E. Gerstein  
Joseph Opper  
Garwin Gerstein & Fisher LLP  
1501 Broadway, Suite 1416  
New York, NY 10036  
[nsilverman@garwingerstein.com](mailto:nsilverman@garwingerstein.com)  
[bgerstein@garwingerstein.com](mailto:bgerstein@garwingerstein.com)  
[jopper@garwingerstein.com](mailto:jopper@garwingerstein.com)

Adam M. Moskowitz  
Tucker Ronzetti  
David M. Buckner  
Kozyak Torpin & Throckmorton, P.A.  
2525 Ponce de Leon, 9<sup>th</sup> floor  
Miami, FL 33134  
[AMM@KTTLAW.COM](mailto:AMM@KTTLAW.COM)  
[TR@KTTLAW.COM](mailto:TR@KTTLAW.COM)  
[DMB@KTTLAW.COM](mailto:DMB@KTTLAW.COM)

/s/ David E. Moore  
Richard L. Horwitz (#2246)  
David E. Moore (#3983)  
Potter Anderson & Corroon LLP  
Hercules Plaza  
Wilmington, DE 19899  
(302) 984-6000  
[rhhorwitz@potteranderson.com](mailto:rhhorwitz@potteranderson.com)  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)